

1 UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF ILLINOIS

3 CITY OF GREENVILLE, ILLINOIS,)
4 et al., individually and on) Docket No. 10-188-JPG-PMF
5 behalf of all others similarly)
6 situated,)
7)
8 Plaintiffs,) Benton, Illinois
9 vs.) July 27, 2010
10)
11 SYNGENTA CROP PROTECTION, Inc.,)
12 and SYNGENTA AG,)
13)
14 Defendants.)

15 Telephone Hearing
16 BEFORE THE HONORABLE PHILIP M. FRAZIER
17 UNITED STATES DISTRICT COURT MAGISTRATE-JUDGE

18 APPEARANCES:

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1 MS. MURPHY: Hey, Judge, Trish Murphy for the
2 plaintiff. We are here at Korein, Tillery with counsel. My
3 co-counsel will introduce themselves. We placed the call.

4 MR. HOFFMAN: Chris Hoffman, Your Honor. I will be
5 speaking for the plaintiff.

6 MS. DEATON: Christie Deaton for the plaintiffs, as
7 well.

8 MR. POPE: Mike Pope in Chicago on behalf of the
9 defendants.

10 (Inaudible.)

11 THE COURT: Okay. We are going to have one
12 speaking per side here. Is Mike Pope going to speak for the
13 defendants?

14 MR. POPE: Yes, Your Honor.

15 MR. HOFFMAN: It's my motion. I'll speak to the
16 motion when you're ready for us.

17 MS. DEATON: We will have Chris Hoffman speaking
18 for the plaintiff. We would have had Steve Tillery, but he's
19 out of the country. We tried like crazy to get him
20 conferenced in, but we just couldn't do it. So Mr. Hoffman
21 is going to speak for the plaintiff.

22 THE COURT: Mr. Hoffman for the plaintiff and
23 Mr. Pope for the defendants. Right?

24 MR. HOFFMAN: I can hear you.

25 THE COURT: Keep your voices clear and strong. We

1 won't be able to have anyone talking over each other. I
2 think it's hard to imagine. Discovery disputes tend to stir
3 passion in people. If there is anything that is not
4 deserving passion in a human being, it's a discovery dispute.
5 Sometimes people do, for whatever reason, act like they're
6 all huffy about it. If you have trouble with it, you need to
7 schedule time with a priest or something afterwards. We
8 don't need any here.

9 The motion is the defendants'. I've been over it.
10 I've also looked at -- I don't have any trouble -- well, let
11 me back up here. I did get the Syngenta's corporate "Where's
12 Waldo." And did they actually use anything for that, Trish?
13 You know what that reminds me of? The last time I saw one of
14 those was something on the news that they had somebody at the
15 pentagon who was showing how things had gotten in Afghanistan
16 or something. Involved all the little cross arrows and
17 everything.

18 But I understand, I guess, the defendants are
19 objecting to, objecting to that for -- I got a copy of an
20 email that said there was no authentication, et cetera, but
21 for today's purposes, it's at least demonstrative and
22 illustrative of the fact that Syngenta is a very large
23 multi-national organization on which I think all of us can
24 agree; is that correct?

25 MS. MURPHY: You got it, Judge. That was the

1 purpose of sending it to you was how hard we're working, all
2 of us, and both sides included.

3 MR. POPE: Judge, this is my motion, Judge. Want
4 me to have just a little introduction to it?

5 THE COURT: Real short.

6 MR. POPE: And very dispassionate. Let me say
7 that, too.

8 THE COURT: Right.

9 MR. POPE: Number one, as you know, they asked you
10 for targeted discovery on jurisdictional issues, and in your
11 order of July 29th, you gave them limited discovery. In fact
12 in one paragraph you used the term "limited discovery" twice,
13 and then to emphasize the point, you gave very specific
14 directions with respect to what discovery could be addressed
15 to Syngenta AG, one and two there, the nature and extent of
16 their contact with Illinois, and the extent to which they've
17 been involved in the manufacture of products, atrazine
18 products, specifically.

19 Number two, as to Syngenta Crop Protection, they
20 could explore the nature and extent of the agency
21 relationship with respect to Crop Protection. A very limited
22 order as I read it.

23 The flood of discovery documents that we received,
24 however, were neither targeted nor limited. We got 32
25 requests for documents, most of which had ten subheadings, 24

1 interrogatories. All of them had subheadings. Sixty-two
2 requests for admissions, and nine notices of deposition with
3 document requests attached.

4 At that stage I immediately contacted Steve
5 Tillery, and I asked him to withdraw and start over again
6 because it looked like these things had all been drafted
7 before your order went out. Ultimately, I talked to
8 Ms. Deaton several times. We must have had several different
9 conversations on this.

10 My position was, number one, the discovery was way
11 beyond what you had ordered, and secondly, many of the
12 requests themselves were, obviously, overbroad with little
13 relevancy to the issues of the case.

14 As I said, we had many conversations with counsel
15 on a meet and confer basis, and we were able to reach some
16 agreement to modify some of those requests, but we were not
17 able to get an agreement on two major issues or get the
18 modification. And of two major issues, the first is their
19 repeated request for discovery of eight or nine affiliated
20 Syngenta companies which seem to be beyond what you ordered
21 and, secondly, the idea of taking nine depositions of
22 employees and executives who work and reside in Switzerland
23 seem far beyond what you intended by limited discovery.

24 We've got no alternative but to seek your guidance
25 on the scope of your order. That's why I didn't file that

1 motion.

2 THE COURT: Let me interrupt. I'm sorry. But you
3 made reference several times to the fact that Syngenta would
4 be subjecting itself to criminal repercussions if it agrees
5 to participate in this without going through the Hague or
6 something. What's up with that?

7 MR. POPE: That's the third issue, Your Honor.
8 Once we know what the scope of the documents is that you
9 intended to order, there is a process, and it shouldn't take
10 much time. The parties would simply draft up a proposed
11 letter that, under the Hague Convention, you would send to a
12 judge in Switzerland, and then that judge would then get the
13 documents and then make them available to the parties that
14 way.

15 THE COURT: I've done the Hague thing several times
16 in the past, and it's always a nightmare. It always closed
17 the case down by a couple of years, anyway. So --

18 MR. POPE: On this case we're not raising the Hague
19 as a shield. We're just saying we will be very willing to
20 cooperate with the plaintiffs' lawyers to get this thing done
21 in a process that gets the documents to them that you rule on
22 without having to incur problems with Swiss authorities.

23 THE COURT: Is there a Swiss law? Because maybe I
24 missed it, but I never saw any citation in there to a
25 particular Swiss law. It seems kind of curious that a

1 company could be subject to criminal problems for not going
2 through the international court.

3 MR. POPE: Your Honor, there's a declaration that
4 is Exhibit No. 16 to our protective order. An outside
5 counsel in Switzerland, and he sets forth the citations, I
6 believe. Apparently, this is a law that was passed in the
7 30s in Switzerland.

8 I don't know how much of it had to do with World
9 War II or whatnot. It's been on the books a long time. It's
10 not a recent development. But my point was I think in
11 working with counsel, we can get the right process that gets
12 this thing done fairly expeditiously and doesn't want to
13 follow Swiss law.

14 THE COURT: Well, hang on a second here. We've got
15 one here. It wasn't 16. That was some interrogatories. And
16 here's the letter of request. Well, yes, I never saw it in
17 there. Okay. Here it is. Conditions for a commissioner or
18 diplomatic or counselor official to obtain evidence in
19 Switzerland. A foreign request for obtaining evidence
20 according to Articles 15 through 17 of the Hague is subject
21 to prior authorization by the Federal Department of Justice
22 and Police. That's different. Oh, well.

23 You know, I'm sure you've been -- you know, you
24 guys are familiar with the law that is going to govern the
25 due process question on the substantial contacts with the

1 state of Illinois. And what information do you have now,
2 Mr. Hoffman, to suggest, you know, when you sued Syngenta
3 that they were doing business in Illinois or had sufficient
4 contacts other than the name?

5 MR. HOFFMAN: You're breaking up a little bit on us
6 there.

7 THE COURT: I'm sorry. What information do the
8 plaintiffs have to support their belief that at the time the
9 lawsuit is filed, that Syngenta AG has sufficient contacts
10 with the state of Illinois to subject it to personal
11 jurisdiction?

12 MR. HOFFMAN: Well, Your Honor, we believe that the
13 decision to manufacture, market, and sell atrazine in the
14 United States and Illinois and spray it on an Illinois farm
15 field would make it the highest level of Syngenta's corporate
16 structure and defendants' Syngenta AG.

17 We have documents that show that the operation of
18 Syngenta's business is a unified whole. Despite this
19 conglomerate of 250 separate corporations, what we find in
20 the document is that the control over what happens at the
21 U.S. subsidiary is exercised outside the true ownership of
22 that company and up in Syngenta entities. And that there are
23 groups set up that can include members of many different
24 corporations that make business decisions about Syngenta's
25 global affairs and operations in the United States, including

1 Illinois, on business grounds, and they completely disregard
2 the corporate structure that they set up for tax and finance
3 purposes.

4 We have numerous documents to show that the new
5 personnel from one country to the other outside the chain of
6 ownership that -- so the decision to be made about what
7 happens at the U.S. company that are outside the (inaudible)
8 ownership that are designed for Syngenta's global business.

9 We also believe that, and if you look at that draft
10 that we have given you of the group structure at Syngenta,
11 Syngenta sits at the top, and you notice a peak line. Those
12 represent six separate wholly owned companies by Syngenta AG
13 over which Syngenta has direct ownership of over 100 percent
14 of the U.S. subsidiary. Our discovery of these entities is
15 designed to show that articles of incorporation, which these
16 entities have and which were set up by Syngenta AG, the
17 contracts between these entities all, basically, require the
18 U.S. subsidiary to do the bidding of the corporate head in
19 Switzerland.

20 THE COURT: Well, I mean, essentially, in order to
21 subject Syngenta AG to jurisdiction here, I mean just showing
22 like you would on some formal alter ego type of analysis that
23 there's, you know, a lot of mixed management characters,
24 board of directors, et cetera, et cetera. It happens to be,
25 essentially, that they're calling the shots. And so, I mean,

1 how crucial is it? I mean, obviously, the group that is
2 manufacturing, whose name is, no doubt about it, on this
3 atrazine, is a group that you already have --

4 UNIDENTIFIED: A North Carolina company, Your
5 Honor.

6 THE COURT: They have jurisdiction on that. Do
7 they not have sufficient assets to cover any judgment that
8 might be entered? Why would you imagine that Syngenta AG
9 would have more? I mean, you know, bearing in mind that the
10 corporate form in America that exists is not primarily, at
11 least secondarily, to allow corporations to, well, tax
12 breaks, to avoid if not almost outright defraud creditors and
13 limit liability.

14 MR. POPE: That's not our issue here either, Your
15 Honor. By the way, Your Honor, it is clear in the case law
16 that just being a holding company doesn't grant --

17 THE COURT: Just being a holding company is not
18 enough. It's just being a holding company. If you're a
19 holding company with the same directors, the same officers,
20 that's not enough.

21 MR. HOFFMAN: Your Honor, we agree that being an
22 investment holding company did not subject the corporate head
23 jurisdiction of the United States. But under the case law
24 that is developed, deals with similar multi-national
25 corporations in Europe. The Supreme Court and several other

1 courts have held that jurisdiction can be exercised over
2 these companies if they are acting not as a mere
3 investigator, but actually managing the entire corporate
4 structure.

5 THE COURT: Right.

6 MR. HOFFMAN: Not so much whether Syngenta U.S. can
7 pay judgment, but we also believe that the ultimate decisions
8 that determined whether atrazine was going to be applied to
9 Illinois farm fields was made at Syngenta AG. As you can
10 see, they are creating a lot of obstacles for us to farm
11 Syngenta AG.

12 In this Madison County case, we are getting
13 discovery from the U.S. subsidiary, but, again, they are not
14 giving us the documents from AG until -- although the U.S.
15 holding company may, as a result of funding from Syngenta AG,
16 be able to pay any judgment, it complicates our case and
17 makes it much more difficult if we can't get to the decision
18 makers and get information from them, get documents from
19 them. And so that's our motivation in getting Syngenta AG to
20 be a defendant in this case.

21 THE COURT: Let me, you know, there's lots of ways
22 to skin a cat, and I understand that, obviously, when you're
23 prosecuting something, you want to be able to look under as
24 many rocks as possible. And, you know, it doesn't hurt the
25 prospect of maybe selling a case. The more rocks you get to

1 look under, a lot of companies just get tired of it and say,
2 Here, take some money and go away.

3 But the problem is I don't want to get involved
4 with the Hague Convention. I've never had a good result with
5 it. This case will probably be over with by the time the
6 Hague Convention does its stuff.

7 MR. HOFFMAN: The Hague Convention is not a
8 mandatory procedure of the United States Supreme Court. Held
9 so about 25 years ago. There are numerous decisions coming
10 out of the Seventh Circuit and other circuits that it's not
11 required when a company like Syngenta AG is created and
12 created corporations to do its business in the United States,
13 they have subjected themselves to the United States judicial
14 system.

15 They cannot operate a multi-billion dollar U.S.
16 crop protection and seed manufacturing and selling and
17 marketing business in the United States without being able,
18 without being subject to U.S. courts. So the Hague
19 Convention is not required in this case. We entirely
20 disagree with Mr. Pope, with all respect. The Hague
21 Convention need not be applied in this case.

22 Moreover, many of the documents we seek regarding
23 SAG and the intermediary companies that separate SAG from the
24 U.S. subsidiary, we believe we can get those documents from
25 the U.S. company. That they are in the control or possession

1 of the U.S. company, and that therefore, we are not asking
2 for any documents that are located in Switzerland.

3 So we think the whole thing is a ruse, you know, to
4 make it seem like this Court is going to have to go through a
5 whole lot of trouble if it keeps Syngenta AG in this case.
6 We don't think it will.

7 MR. POPE: I disagree with references to the case
8 law. Those are very distinguishable situations. This is an
9 international company that sells all over the world. It has
10 one subsidiary in the United States that is a proper party to
11 the case.

12 The question really is, basically, due process and
13 the basic fairness under the jurisdictional questions. And
14 if counsel has evidence showing what, why he wants to make
15 them, why are we harassing the people in Switzerland.
16 They've got what they need. We will take some discovery from
17 Crop Protection that the Carolina company does. That's my
18 main point. I think we've gone way beyond what's ordered,
19 Judge. And you set some very limited areas for that, and
20 they've gone beyond that in the massive discovery they've
21 filed with us.

22 THE COURT: I have no trouble saying the discovery
23 that's been requested goes far beyond what I had imagined.
24 So, I mean, among other things, I don't recall granting
25 anybody leave to file in excess of 25 interrogatories.

1 That's just not going to work.

2 But there's got to be a simpler way to get what you
3 want. If the control of Syngenta AG is as pervasive as the
4 plaintiff believes, then what would be the difficulty in
5 going after Crop Protection over whom you and the Court does
6 have jurisdiction? You've got your hooks in them. And just
7 start discovering from them what contacts they have with
8 Syngenta AG. I mean if, in fact, Syngenta AG is calling the
9 shots, you should be able to get it from the Crop Protection
10 people just as easily as you get it from Syngenta AG.

11 MR. HOFFMAN: Your Honor, I notice in a few of the
12 large discovery requests, we believe that the Court's order
13 perfectly tracks the case law that allows us to show the kind
14 of control we have seen a glimpse into, but we are not being
15 allowed to get enough to really show it. So we've got --

16 THE COURT: They will hide it from you if they can.
17 Don't get me wrong, but let's just say if, as you believe --
18 let's put it this way. If Syngenta AG's presence in the
19 operation of the Syngenta Crop Protection defendant, if that
20 is pervasive to and significant to the point that would
21 sustain personal jurisdiction here, then you ought to be able
22 to get that information from Crop Protection.

23 MR. HOFFMAN: Well, we would like to believe that's
24 true, but it's not true in our Madison County litigation
25 where obstacles are being raised, and we don't think that

1 having just Syngenta U.S. is the way to go. And we also take
2 it Syngenta AG is the one calling the shots. They are legal
3 in Switzerland. Can't apply. But yet they made a decision
4 from the very top of the Syngenta corporate head that they
5 were going to (inaudible). And we know that the U.S.
6 corporation could not have made that decision on its own.

7 MR. POPE: Now counsel is starting to testify, Your
8 Honor. As a matter of fact, it's standard that what the
9 Court looks to is day-to-day decisions, and if they think
10 they can establish that the Swiss company controlled
11 day-to-day decisions as you suggested just a minute ago, I
12 believe they should go to Crop Protection and prove it that
13 way.

14 That is based on a lot of time, a lot of effort and
15 flying around the world. And if they don't get the proper
16 answers there, they can come back.

17 MR. HOFFMAN: I can't tell you about this Madison
18 County case. I'm only recently part of that. I haven't seen
19 any of the documents produced, and I don't think that's a
20 fair argument to make.

21 THE COURT: Well, I mean, we're talking about a
22 very high level of involvement and control that Syngenta AG
23 is going to have to be shown to exert over the regular
24 operations of Crop Protection in order to be doing business
25 and have significant contacts with this stage to give

1 jurisdictional threshold. Okay?

2 And that type of control that involves, you know,
3 there's two sides to that knife. You've got the ones that
4 are giving the orders, and you've got the ones that are
5 getting the orders, and they're both involved, and they are
6 equally involved.

7 And so here's the way we're going to go about this.
8 Is that I will, and just so that there's no mistake down the
9 road because I imagine they're going to want to start really
10 beating this pretty hard, but I'm a very big believer in
11 liberal discovery when it's not really expensive and time
12 consuming and just looking for something that's pure fishing.
13 All right?

14 And so I'm going to let him really rattle cages at
15 Syngenta Crop Protection. You're going to get to see every
16 communication. Anything that's coming out of Switzerland to
17 Crop Protection is going to be fair game for discovery.

18 So now what could we possibly conclude if there's
19 very limited communication from Switzerland to Crop
20 Protection, and it's not the sort that is, that one would
21 find in the day-to-day operation of the business. And all of
22 the higher ups, and they're going to be deposing the people
23 who are in the highest officers of Crop Protection, and these
24 people are willing to, you know, if their testimony under
25 oath is that You know what? No, we run it. They don't run

1 it.

2 I'm sure that that would not be satisfactory.

3 Certainly, if I were representing the plaintiffs, I wouldn't
4 be happy with that, but that's what we're going to have.

5 Because it's for sure that one of two things is
6 happening. Either that's the way it really is or if you have
7 people who are willing to commit perjury, it's not likely
8 that anybody in Switzerland is going to come out and say, Oh,
9 yeah, not only are we running the show, but we told these
10 people a lie. Or these people just decided to throw
11 themselves in front of the train to save us. At some point
12 we've got to do this logically.

13 And the other thing. Here's the other thing. I
14 don't know if this would violate Swiss law, but what would be
15 the harm in having a couple of like 30(b)(6) designees from
16 Syngenta AG either make themselves available for depositions.
17 I mean surely they, if it's done without process, if they
18 just voluntarily agree to a deposition, they could do it
19 telephonically. The plaintiffs' attorneys could send a
20 little delegation to Switzerland, any number of things. And
21 what would be the difficulty in that?

22 MR. POPE: Well, Your Honor, I understand one of
23 the declarants is from AG, and I offered to bring him to the
24 states to be deposed. So you will get that one deposition of
25 Mr. Meili. And then we also have a deposition we would be

1 willing to give of Ted Quarles who is the general counsel of
2 the North Carolina company, Crop Protection. I will declare
3 one of whom who works in Switzerland.

4 THE COURT: Well, I mean I'm talking about one of
5 the, I don't know how big a dog you're bringing to
6 Switzerland, but what would be the harm to bring someone? If
7 you know that the plaintiffs' attorneys are going to look at
8 it and just say, Well, this isn't the right person or this
9 person can't know anything or this person is just a lackey.

10 MR. POPE: We have discussed, Your Honor, if you
11 were to compel a third deposition, we talked about making
12 somebody available in someplace like Belgium and be in a
13 neutral country. Easy for us to get to, and he could do it
14 all by telephone. But if they wanted to be in person, my
15 firm has an office in Belgium, so that would work for one of
16 our purposes.

17 MR. HOFFMAN: Your Honor, may I inject? He talked
18 about the two affiants, and, of course, they are going to
19 have to testify to test the accuracy of their affidavit and
20 their knowledge to support the claims they make in their
21 affidavit. But we've asked for seven other people, and they
22 all work for the U.S. company.

23 There's no need for a Swiss deposition here. Of
24 course, two of them also serve on the executive committee,
25 the Syngenta AG, but every single one of the other

1 depositions, other than the affiant, are people who work for
2 or serve on the board of the U.S. subsidiary. So we're not
3 asking for any deposition of somebody who doesn't have a
4 clear connection to the United States and of the U.S.
5 subsidiary.

6 MR. POPE: Wait just a second. The two people he's
7 talking about live in Switzerland and work in Switzerland.
8 They are not employed by Crop Protection. They sit on the
9 board of directors of Crop Protection, but that doesn't mean
10 they come to the states with any regularity at all. Many of
11 their board of directors' meetings are held by telephone.

12 And that's unfair to suggest that these two people
13 who live and work in Switzerland should be dragged over here
14 willy-nilly. That's one of the first questions I raised with
15 counsel. If you get the two declarants and the Court thinks
16 we need to have one other person from Switzerland available
17 in Europe, I can understand that, but we don't need nine
18 depositions.

19 THE COURT: No. No. No. We're not talking about
20 dragging anybody anywhere. I'm talking about as far as these
21 people probably come to the United States occasionally, and
22 they're going to have to pay for you or somebody else to go
23 over there.

24 How hard would it be to pick a higher up? I mean
25 somebody who's standing within the Syngenta AG cannot be

1 questioned even by the plaintiffs' attorneys in this case
2 because you know that they're going to question anybody that,
3 you know, they're going to think anybody you're willing to
4 produce is not somebody who knows anything is going to do
5 them any good. That's just the nature of how this whole
6 thing goes.

7 MR. POPE: I hope I can be trusted more than some,
8 Judge, but I understand what you're saying.

9 THE COURT: It's a very cynical operation that we
10 have here in our business, and it's just the way it is,
11 unfortunately, and not likely to change. So why not just
12 knock them over. Give them somebody that not even they can
13 question, somebody who is so high up. Don't make it somebody
14 who's so high up they will say he doesn't know anything.
15 He's too high up.

16 MR. HOFFMAN: Your Honor, we have picked these nine
17 people, and there's seven other people we've requested. And
18 we picked them based on the review of the documents produced
19 in the Madison County case that show that they have
20 particularized knowledge of certain aspects of Syngenta's
21 business that show that other courts have found show
22 jurisdiction over the parent.

23 THE COURT: Who are those people?

24 MR. HOFFMAN: Christoph Mader. He serves on what's
25 called the executive committee of Syngenta AG. That's a

1 group of a handful of people who are at the very top of
2 Syngenta's structure. He also serves on the board of
3 directors of the U.S. subsidiary. We've asked for his
4 deposition. He's the chief lawyer for Syngenta Global.

5 THE COURT: Now --

6 MR. HOFFMAN: We'll find out that the corporate
7 structure was created and operates for talks and finance
8 purposes, but it doesn't have any business relatives. It
9 isn't honored in the business practice. It's just for this
10 sole purpose.

11 The second guy who has a position at AG, also on
12 that executive committee and also a member of the U.S.
13 subsidiary board of directors, he runs the whole Crop
14 Protection business of Syngenta across the world. And we
15 believe that he will be able to show that Syngenta AG is
16 calling shots about how atrazine is manufactured, marketed,
17 and sprayed on Illinois farms.

18 The remainder of the people are all employees at
19 the U.S. subsidiary, people at the highest echelon of that
20 corporation. And each of those are selected because they
21 have a particularized expertise, one in regulatory affairs,
22 one handles personnel affairs, one handles finance, and
23 another one handles special relationships with other Syngenta
24 entities that are not in the chain of ownership of SAG, SCPI.

25 So we think nine is not a whole lot. Two we have

1 to take because of the affiants. We think those will be
2 useless. So we have seven real depositions we are asking for
3 in this very important case. We don't think that's a fishing
4 expedition. We think that is narrowly targeted to prove the
5 points that cases as shown give jurisdiction to this corp
6 over the U.S. parent.

7 There are a couple of those cases we could send you
8 or give you the cites, and they match what's going on here as
9 far as we can tell almost precisely. And in a recent case,
10 one in 2008, one in 2009 --

11 THE COURT: One of my law clerks is here on the
12 other end. What are those cites?

13 MR. HOFFMAN: 674 F.Supp. 2d 580.

14 THE COURT: That's going to be useless. It's
15 another district court.

16 MR. HOFFMAN: 576 F.Supp. 2d 1053.

17 THE COURT: Those are probably not going to be
18 useful. Those are other district courts.

19 MR. HOFFMAN: They offer you a glimpse of what's
20 going on. And they cite other cases to support their
21 conclusions, as well.

22 THE COURT: What districts are those?

23 MR. HOFFMAN: Those are the Eastern District of
24 Missouri right across the river here and the Eastern District
25 of Pennsylvania, Your Honor.

1 THE COURT: Well, normally, other district court
2 decisions are not -- well, they're certainly not --

3 MR. POPE: I think you can summarize, Judge. Most
4 of these cases suggest you do have some discretion. There's
5 no question about that. You can exercise your discretion
6 with two factors in mind. One, the fairness to the
7 deponents, and secondly, the idea of economy. And when you
8 have foreign countries involved, you have to think about
9 that, as well.

10 THE COURT: I'm not too concerned about the Swiss.

11 MR. POPE: I don't think they've shown any reason
12 why they need that for this limited issue on the jurisdiction
13 of Syngenta AG.

14 THE COURT: I don't think the Swiss are too likely
15 to declare war over this. But, you know, my biggest concern
16 is always in these things is the economy of it. I understand
17 that there are certain things that are just not --

18 MR. POPE: What is your biggest concern, Your
19 Honor?

20 THE COURT: The economy of these things. And I'll
21 be honest with you guys, too. One of the things I'm thinking
22 about, and I may just kind of defer until Judge Gilbert has
23 an opportunity to make his ruling on the motion to dismiss
24 that's filed by Crop Protection on the actual substance of
25 the allegations.

1 I mean, this is not quite a *Palsgraf* situation, but
2 let's just say when I read the complaint, there were some red
3 lights that went off in my head. You know, we bear some
4 close scrutiny as to whether or not there's even a claim
5 here. And if, obviously, if there is no claim against Crop
6 Protection, there's not going to be a claim against Syngenta
7 AG on these, with these allegations. I understand that that
8 motion is fully briefed and before Judge Gilbert now; is that
9 right?

10 MR. POPE: Yes, Your Honor.

11 THE COURT: So it may be worthwhile just to wait
12 and see what happens. I would anticipate we will have a
13 ruling on that within the next two or three months.

14 In the meantime do this: What is the possibility
15 of -- who were the people, the top people at Syngenta AG, who
16 you believe would be involved in knowing what's going on as
17 far as Syngenta AG direction and control?

18 MR. HOFFMAN: Your Honor, we've identified two
19 people, Christoph Mader and John Atkin. I described their
20 positions earlier to you.

21 THE COURT: Now, these are ones that Syngenta AG
22 would be willing to make available for depositions in
23 Belgium?

24 MR. HOFFMAN: I haven't inquired, but one of them
25 is available in Brussels.

1 THE COURT: Where's the other one?

2 UNIDENTIFIED: One of them is living in
3 Switzerland. Where is the other one?

4 MR. POPE: They both live in Switzerland.

5 THE COURT: Could you like smuggle them over the
6 line into Belgium for their depositions? I mean this is
7 starting to be one of the *Bourne* movies or something, but can
8 you get them over there and be deposed?

9 And, you know, the problem with the attorney, I
10 don't want to get this guy over to Brussels or someplace to
11 be deposed and have him sit there and start claiming a lot of
12 attorney-client privileges on things.

13 MR. POPE: I don't think that's as much of a
14 problem as me going back to the client and saying, We need to
15 have two of the top executives of this international company
16 be deposed. But if that's your order, we, obviously, will
17 comply with it.

18 THE COURT: And I think that's probably where we
19 are headed on this. You got these two guys. You get the two
20 guys the plaintiffs have named, and I know they don't want to
21 be deposed. But I'll tell you what. We'll limit the
22 depositions to three hours apiece.

23 MR. POPE: All right. I can't speak right now with
24 the scheduling. I will, obviously, follow up with those
25 clients and with counsel.

1 THE COURT: And, guys, we've got to believe, too,
2 that at some point it's the plaintiffs' responsibility when
3 you file a lawsuit, at the time you file a lawsuit. To what
4 you're alleging, personal jurisdiction, you better have some
5 facts in hand. I'm not talking about suspicion or what seems
6 logical. I'm talking about you better have some facts in
7 hand that back up jurisdictional claims.

8 And so I'm going to presume that you all, being
9 very careful lawyers, that you do have some of the facts in
10 hand to support allegations that that would give this Court
11 jurisdiction over Syngenta AG. And then, actually, if we're
12 going to go to all of that trouble, we will limit the
13 depositions to five hours apiece. And I know it's going to
14 be an imposition, but I would imagine that these guys could
15 probably use a little vacation in Belgium. Anybody seen the
16 movie *In Bruges*?

17 MR. HOFFMAN: Yes.

18 THE COURT: Very good movie. I never thought
19 Belgium would be anyplace to be an interesting place to
20 visit.

21 MR. HOFFMAN: You will have to arrange a vacation
22 there to take the depositions with us.

23 THE COURT: I'll wait until Hawaii or something.
24 But, anyway, get those two depositions arranged within the
25 next three months. All right? And the whole thing may be a

1 moot issue by then if Judge Gilbert decides there's no claim
2 anyway.

3 But, you know, if we get them deposed and within
4 the next 90 days as to what they know about Syngenta AG's
5 control over Crop Protection activities here in the United
6 States. I mean try the best you can to limit it to Crop
7 Protection because they could have any manner of other --
8 well, I guess if they were doing other business here. What
9 if it turns out that Syngenta AG is not doing anything to
10 Crop Protection, but turns out that they own Wrigley Field
11 and are operating the Cubs? So I mean --

12 MR. POPE: We can stipulate that's not the fact,
13 Your Honor.

14 THE COURT: I know it's probably not, but if they
15 have some other. You're probably going to have to get into
16 what their other contacts with the state are. But I guess it
17 would have to be if they don't live here or have a place of
18 business here, then is it going to be under like Illinois
19 long-arm jurisdiction analysis?

20 MR. POPE: Due process under the federal
21 constitution.

22 THE COURT: Well, all that is stuff all of us
23 forgot about after *Pennoyer vs. Neff*. But, anyway, get going
24 on that, and I really want to keep this -- it's going be very
25 costly, and we want to keep this to a manageable situation.

1 One of the questions I wanted to ask you guys about
2 is there any common thread between all of these
3 municipalities in terms of some geographical connection?
4 Because I live in Nashville, Illinois.

5 MS. DEATON: This is Christie Deaton. The
6 connection, Judge, and I'm sorry for interrupting. But the
7 connection on all of these are all municipalities or water
8 providers who have atrazine contamination. Usually, it's a
9 surface water issue. There are some that have it in their
10 ground water because they have some kind of -- I won't bore
11 you with this, engineering details of how that occurred, but
12 it gets into the ground water from runoff from fills.

13 THE COURT: That much I got from reading the
14 complaint. I live just south of Greenville, Illinois. And I
15 don't want to find out -- I guess I should do just a local
16 request to see if my municipality removes atrazine.

17 MS. DEATON: If they have surface water that they
18 are pulling from in the midwest, then they probably have
19 atrazine that they are already removing from the water. It's
20 just the midwest has it all over the place. It ends up in
21 water supplies. I mean, that's the crux of our case.

22 THE COURT: Okay. Well, I know. It was fairly
23 close by to where I live. I don't want to get too far into a
24 case and find out that I have to recuse if it turns out that,
25 say, my -- I know that my little town is not a named

1 plaintiff. I don't know if they've considered it or anything
2 else. But I just don't want to get too deeply into the case
3 and then find out that I have to recuse. So because as it
4 stands right now, I may be doing a little questioning
5 around --

6 MR. POPE: If I could ask you to keep your voice
7 up.

8 THE COURT: I may ask locally and see if this is
9 something they have any concerns about in terms of that, but
10 you know, probably if it applies to me, it would apply to any
11 of the other judges in the district, as well.

12 So all right. So does that resolve what we need to
13 get resolved today? And I know we didn't resolve a lot, but
14 we got some of it done.

15 MR. POPE: Your Honor, if I understand you
16 correctly, you've asked me to try to get Mr. Mader and
17 Mr. Atkin to be available in Belgium within the next 90 days
18 for a deposition that will be five hours each. What about
19 the remainder of the discovery? Is that going to be in lieu
20 of that?

21 THE COURT: No, you need to keep going with your
22 discovery on that. I don't know what else to tell you.

23 MR. HOFFMAN: Your Honor, we would like it to be
24 clear that the U.S. Holding Company which doesn't have these
25 concerns about Swiss law and the Hague Convention, that they

1 be ordered to respond with documents regarding the
2 specific -- we've asked for seven non-parties, information
3 about seven non-parties in the possession of the U.S.
4 subsidiary so that we can understand the relationship,
5 contractual and otherwise, between those entities.

6 They are either in the direct line of ownership
7 going up to SAG or we've seen documents showing that these
8 companies completely outside the line of ownership are giving
9 orders to U.S. company. So we would like that company, to
10 the extent they are in possession and control of those
11 documents we've requested about these entities, to produce
12 those prior to the depositions so that we have the documents
13 we could use to craft our questions and to challenge the
14 witnesses.

15 THE COURT: Sure. I don't care. Anybody you've
16 got jurisdiction over that you can go for on some of these
17 things. I mean I should say within reason, but yeah, if it
18 were me, I would be attacking it from the other end. I would
19 be going after it from --

20 Like I say, if you are to get jurisdiction over
21 Syngenta AG, and it will only be because they are exhibiting
22 an extraordinary amount of control over the -- I think here's
23 what the -- was it here? The United States Supreme Court
24 has, the personal jurisdiction cannot be premised on
25 corporate affiliation or stock ownership alone. Parent does

1 not exercise an unusually high degree of control over the
2 subsidiary. That's --

3 MR. HOFFMAN: Your Honor, we think we can show
4 that. We have tried what you are saying because that's what
5 we were thinking. We were thinking the Swiss people are
6 going to be real difficult about documents or anything. If
7 you look our discovery is primarily directed to the U.S.
8 court. Our request for documents from the Swiss parent
9 corporation, if you look, they are very simple, very simple
10 and they are directed exclusively to show contacts with
11 Illinois. Now we are willing to forego those if we can get
12 documents from the U.S. subsidiary in response to the
13 requests we made to that company.

14 THE COURT: You can either demonstrate -- right now
15 you can either demonstrate probably you've got 90 percent of
16 whatever, 95 percent of whatever you're ever going to have,
17 showing that Syngenta AG has done things in the state of
18 Illinois to subject it to jurisdiction. So probably if you
19 were to be -- those are not rocks that are going to be likely
20 good rocks to look under. If it were me, I would try to go
21 about it the other way and show that Syngenta AG is
22 exercising an unusual amount of control over a company that
23 does have contacts with Illinois.

24 MR. HOFFMAN: Well, we believe that we need to show
25 that through this chain of ownership. Because -- I mean,

1 it's like this, Your Honor. Let's suppose I'm in Missouri,
2 which I am, and I tell somebody here, I want you to go spray
3 some poison on an Illinois farm field, and that person tells
4 another person in Missouri, Well, Hoffman says to spray it.
5 And then he tells another person and he tells another person.
6 Then somebody calls somebody in Illinois to spray, and that
7 person sprays it. And then they name me as a defendant.

8 I say, Look, you can't talk to the people I talked
9 to. You can't show that I ordered that because all these
10 intermediaries are beyond discovery. That's what they're
11 saying here, all these intermediaries and information about
12 them.

13 THE COURT: I don't have any trouble if you work
14 backwards, work backwards. We're on the same page with that.
15 You need to start off at -- you're going to need to just
16 start at the receiving end of the orders. That would be
17 through Crop Protection and work your way backward.

18 It's like the age-old follow the money trail advice
19 people give when you want to find out what's going on with
20 anything. You just follow the money. In this case you're
21 just going to have to get on that, not the money trail, but
22 the orders and directions trail and follow it and see where
23 it goes. Understanding, of course, that in your example if
24 there are four intermediaries between you and the person who
25 actually sprays the poison and one of them decides he's not

1 going to talk, well, then you're pretty much done.

2 MR. HOFFMAN: We're not even asking those people to
3 talk. We're asking the U.S. subsidiary to give us basic
4 documents like the articles of incorporation.

5 THE COURT: Fine. You should do that. Drop
6 subpoenas on them.

7 MR. POPE: Well, let's just remember one thing, and
8 if I may interpose an objection to referring to this as
9 poison. This a legal product that's been sold for 50 years.

10 THE COURT: You don't have to defend your product
11 with me. I've been around a long time. It probably is
12 poison, but go ahead.

13 MR. POPE: It's poison to weeds. That's for sure.
14 What they're asking for, they are going to Crop Protection
15 saying, Give us the articles of incorporation and bylaws of
16 these other nine companies. I mean, that's just broadening
17 the scope of discovery far beyond what you suggested in your
18 order of June 29th. I don't have the actual numbers, but why
19 would one company have the articles of corporation of
20 another?

21 THE COURT: How hard, how much work can that
22 possibly be to say, We don't have it?

23 MR. POPE: I know, but I think the scope of what
24 you ordered is being violated.

25 THE COURT: And the scope on something like this is

1 really hard to find. Like define the universe. Give three
2 examples.

3 MR. HOFFMAN: With regard to the depositions, are
4 you suggesting a phased approach here or what? My
5 instruction was nine depositions is overkill.

6 THE COURT: Well, this is just on jurisdiction, not
7 on -- now, obviously, they're probably going to ask some
8 questions about Syngenta, as to whether or not anybody at
9 Syngenta AG is monitoring the production of atrazine or had
10 anything to do with the development of atrazine.

11 MR. POPE: My point was that a super contender
12 asking for nine people when you said we will bring in a
13 couple of top executives, but do we really need to take all
14 of these depositions? Talk about economy.

15 MR. HOFFMAN: Your Honor --

16 THE COURT: We're taking a ton of depositions for a
17 case like this. I'm trying to avoid like 200 depositions.
18 These cases are God awful expensive and, you know, they just
19 are. They are God awful expensive, and they're a pain in the
20 butt for everybody. But that's just the nature of the beast.

21 You know, we can make this -- the only way, the
22 only way that we can make this more expensive, more difficult
23 for everyone, is if we have a lot of these. And the worse
24 possible thing -- it could happen for any of you -- is to
25 have me start defining how work is going to proceed. Because

1 my schedule will not be one you'll like. It just won't be,
2 and nobody will like it.

3 And so it's just, you know, you've really got to
4 figure out. I've told plaintiff that, yes, what you've
5 planned is overly ambitious, and we are going to start off
6 with just those two from Syngenta AG, and then you're going
7 to have to start pounding it from the other direction. And,
8 you know, my order with regard to the jurisdictional
9 discovery was really more limited to things that would be
10 directed to Syngenta AG itself.

11 Now, as far as Crop Protection, you know, they're
12 fair game. They're fair game. And I guess the people at
13 Crop Protection need to understand that, yes, this is going
14 to be a painful and expensive operation, and there's no other
15 way to do it. And what they need to do is we need to get
16 this thing in a situation where maybe you guys want to settle
17 it. Everybody would because it's going to be a painful
18 experience.

19 MR. POPE: The situation where what, Judge?

20 THE COURT: Once everybody realizes what a painful
21 and expensive thing this is going to be, maybe people will
22 want to get together, and we can settle this case. But this
23 could be, well, this could be an expensive, plus this could
24 be over with the plaintiffs real quick.

25 MR. HOFFMAN: Well, our understanding that even if

1 the U.S. subsidiaries' motion to dismiss, 12(b)(6), agrees in
2 full, this case would still not disappear. There are
3 elements about claims that are not being attacked by their
4 motion to dismiss.

5 THE COURT: Well, then, we would just deal with
6 what's left. I don't know what elements those would be, but,
7 you know, we'll have to drive off that bridge when we get to
8 it.

9 So, you know, for now it may be in everybody's
10 interest, and, folks, you know, I don't usually get all that
11 involved in class actions. The settlement is part of it
12 because that just seems to be the way those things go, but I
13 am always available. That's what I do around here,
14 primarily, and I'm at your disposal within reason to anything
15 that promotes the smooth, efficient, and inexpensive
16 resolution of this case. So, you know, we just need to bear
17 this in mind.

18 MR. POPE: Judge, you're breaking up again.

19 THE COURT: I said I am at your disposal. You
20 know, if settlement is something you want to pursue, I am at
21 your disposal to do anything that is going to promote the
22 expeditious and inexpensive resolution of the case. And but,
23 you know, I guess everybody is going to have a little -- get
24 a little blood in their mouth before that happens.

25 Like I said, the plaintiffs are probably going to

1 need to get some hard thought to what may be left after the
2 motions to dismiss are ruled upon.

3 And, you know, the only people who really know
4 what's going on are the people at Syngenta. The people at
5 Syngenta AG know that they have been actively involved in
6 directing that the atrazine be sprayed in Illinois. And, you
7 know, they know that these plaintiffs' attorneys are, this is
8 a go-get-em bunch and so, you know, they're going to keep
9 looking under rocks. So they can save themselves some
10 expense if they want to pony up some dough and get it over
11 with.

12 So I mean it's just kind of the way it is. But is
13 there anything else we can do today?

14 MR. HOPE: Judge, are you going to issue an order
15 based on today?

16 THE COURT: Well, hopefully, I have a law clerk and
17 a courtroom deputy who are taking this down.

18 MR. POPE: The reason I ask this, could I be
19 granted 30 days to respond to discovery? Will that be
20 allowed, the documents and all that stuff? I mean the
21 interrogatories and all that?

22 THE COURT: Sure. Right. That's fine.

23 MS. DEATON: Judge, I guess I'm confused then.
24 What about the discovery that is out there already that,
25 basically, is directed to the U.S.?

1 MR. HOFFMAN: I think he just said they had 30 days
2 to respond.

3 THE COURT: Thirty days to respond to everything
4 that's direct to that. And while we are on that subject,
5 okay, I have been doing discovery disputes now for 23 years,
6 and what I don't want is in response to the discovery, a lot
7 of times lawyers feel duty bound to their clients to try out
8 every objection and every privilege and everything and give
9 it all a whirl. That almost never works with me. My
10 favorite phrase in discovery is "just do it."

11 And if you've got a real live attorney-client or
12 something, that's fine, but don't forget to use your logs
13 because you're going to have to have the privilege. But what
14 I really don't want are general objections, number one.
15 Useless. Don't use them. Nobody has ever been able to cite
16 me to any case where general objections have ever saved the
17 day or even been useful.

18 And all the other objections, a lot of times we get
19 the, you know, every objection known to mankind followed by a
20 simple answer, you know, subject to and without waiving any
21 of the foregoing, the answer is none. Why do that? I mean
22 it just promotes a very, very contentious and non-productive
23 atmosphere.

24 I can tell you guys that 99, historically 95
25 percent of your objections will be overruled. You'll be

1 ordered to pay the other side's expenses and we'll go on.

2 So, you know, we will move this thing right on along.

3 Anything else from anybody?

4 MR. POPE: Thanks for the advice. We will wait for
5 the order.

6 THE COURT: Jeremy, do you need anything else on
7 that order?

8 LAW CLERK: No. That's it.

9 THE COURT: All right. Thanks very much.

10 (End of telephone motion hearing.)

11

12 REPORTER'S CERTIFICATE

13

14 I, Jane McCorkle, Official Court Reporter for the
15 United States District Court for the Southern District of
16 Illinois, do hereby certify that the above and foregoing is a
17 true and correct transcript of the proceedings of Telephone
18 Motion Hearing had in this cause as same appears from my
19 stenotype notes made personally during the progress of said
20 proceedings.

21

22

23 DATE: 8/3/10 s/s Jane McCorkle

24 JANE McCORKLE

25